



It is the policy of the Board to prevent a petitioner who was served with a potentially dispositive motion from escaping that motion by filing a civil action and then moving to suspend before the Board has decided the potentially dispositive motion. See TBMP § 510.02(a). This is exactly what Petitioner is attempting to do in this case.

Therefore, under TBMP § 510.02(a) and 37 C.F.R. § 2.117(b), Registrant respectfully requests that the Board first decide the potentially dispositive motion before the question of suspension is considered.

Additionally, because the civil action recently filed by Petitioner does not deal with the same issues involved in the instant proceeding, we request that the Board exercise its discretion and deny Petitioner's Motion to Suspend.

Dated: December 30, 2002

Respectfully submitted,  
**HERRINGTON & COMPANY, INC.**

By: P. Craig Cardon  
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Elizabeth Moreno McArthur  
SQUIRE SANDERS & DEMPSEY L.L.P.  
1 Maritime Plaza, Suite 300  
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Attorneys for Registrant

Express Mail mailing label No. EL 952564537 US

Date of Deposit January 3, 2003

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Sadie Lum

(Type or Print Name of Person Mailing Paper or Fee)

*Sadie Lum*

(Signature of Person Mailing Paper or Fee)

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Received from <415 393 9887> at 1/3/03 7:16:53 PM [Eastern Standard Time]

Reg  
No. 2,372,585

File No. 40362.6

By E. McArthur

Mark: TBC HERRINGTON'S TEDDY BEAR CLUB &amp; Design

Date Mailed January 3, 2003

Due Date

The following has been received in the U.S. Patent and Trademark Office on the date stamped hereon:  
Registrant's Response to Petitioner's Motion to Suspend

- |   |  |
|---|--|
| <input type="checkbox"/> Trademark Application/Specimens            | <input type="checkbox"/> Petition to Revive                        |
| <input type="checkbox"/> ITU Trademark Application                  | <input type="checkbox"/> Request for Reconsideration               |
| <input type="checkbox"/> Formal Drawing                             | <input type="checkbox"/> Notice of Appeal                          |
| <input type="checkbox"/> Declaration under Section 2.20             | <input type="checkbox"/> Appeal Brief                              |
| <input type="checkbox"/> Affidavit/Declaration                      | <input type="checkbox"/> Combined Section 8 & 15 Declaration       |
| <input type="checkbox"/> Substitute Specimens                       | <input type="checkbox"/> Trademark Renewal Application             |
| <input type="checkbox"/> Extension of Time Request #____ for SOU    | <input type="checkbox"/> Extension of Time to Oppose Request #____ |
| <input type="checkbox"/> Statement of Use/Amendment to Allege Use   | <input type="checkbox"/> Notice of Opposition                      |
| <input type="checkbox"/> Amendment/Response                         | <input type="checkbox"/> Answer to Opposition                      |
| <input type="checkbox"/> Exhibit _____                              | <input checked="" type="checkbox"/> Transmittal Letter/Postcard    |
| <input type="checkbox"/> Power of Attorney                          | <input checked="" type="checkbox"/> Express Mail Certificate       |
| <input type="checkbox"/> Appointment of Domestic Representative     | <input type="checkbox"/> Deposit Account Authorization             |
| <input type="checkbox"/> Assignment & Cover Sheet                   | <input type="checkbox"/> Other _____                               |
| <input type="checkbox"/> Security Interest Assignment & Cover Sheet |  |



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Fax: +1.415.393.9887

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ccardon@ssd.com

December 30, 2002

**BY U.S. EXPRESS MAIL**

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513  
Attention: Legal Assistant, TTAB

**Re: Cancellation No.: 32,282**  
**Mark: TBC HERRINGTON'S TEDDY BEAR CLUB & Design**  
**Registration No.: 2,382,866**  
**Registration Date: September 5, 2000**  
**Registrant: Herrington & Company, Inc.**  
**Our Ref.: 40362.10**

Dear Sir or Madam:

Enclosed herewith is Registrant's Response to Petitioner's Motion to Suspend for the above referenced matter. So that we may have a timely record of receipt of the enclosed, please date-stamp the enclosed, stamped, self-addressed post card, and deposit it into the U.S. mail.

Please direct all correspondence regarding this matter to my attention.

Very truly yours,

P. Craig Cardon  
Attorney at Law

PCC/sl

Enclosure

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK AND APPEAL BOARD**

IN THE MATTER OF TRADEMARK REGISTRATION NO. 2,382,866  
Registered September 5, 2000

BOYDS COLLECTION, LTD.,	)	Cancellation No. 32,282
Petitioner,	)	
	)	
v.	)	<u>Mark:</u> TBC HERRINGTON'S TEDDY
	)	BEAR CLUB & Design
HERRINGTON & COMPANY, INC.,	)	
Registrant.	)	<u>Registration No.:</u> 2,382,866
	)	<u>Registration Date:</u> September 5, 2000

**REGISTRANT'S RESPONSE TO PETITIONER'S MOTION TO SUSPEND**

In response to Petitioner BOYDS COLLECTION, LTD. ("Petitioner")'s Motion to Suspend the above captioned action, Registrant HERRINGTON & COMPANY, INC. ("Registrant") hereby responds to the Motion to Suspend. Registrant requests that the Board consider this response under TBMP § 510, 37 C.F.R. § 2.117.

It is well known that the suspension of a Board proceeding pending the final determination of another proceeding is solely within the discretion of the Board. TBMP § 510. Registrant hereby opposes Petitioner's Motion to Suspend and requests that the Board, in its discretion, deny the Motion to Suspend on the grounds that there was pending at the time Petitioner's Motion to Suspend was filed, a motion that is potentially dispositive of the above cancellation action and that the civil action filed by Petitioner does not involve issues that are directly in common with those in the instant cancellation action. See TBMP § 510.02 (citing to 37 CFR § 2.117(b) and Notice of Final Rulemaking published in the *Federal Register* on May 23, 1983 at 48 FR 23122, 23129).

On October 7, 2002, Registrant filed a Motion to Strike and Objections to Petitioner's Notice of Reliance in the above action. On October 25, 2002 Petitioner filed a response to said motion and on November 14, 2002 Registrant filed a reply thereto. This Motion to Strike is currently pending before the Board and was pending when the instant Motion to Suspend was filed by Petitioner. The decision on the Motion to Strike is potentially dispositive of the action as a whole.

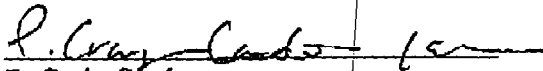
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Therefore, under TBMP § 510.02(a) and 37 CFR § 2.117(b), Registrant respectfully requests that the Board first decide the potentially dispositive motion before the question of suspension is considered.

Additionally, because the civil action recently filed by Petitioner does not deal with the same issues involved in the instant proceeding, we request that the Board exercise its discretion and deny Petitioner's Motion to Suspend.

Dated: December 30, 2002

Respectfully submitted,  
**HERRINGTON & COMPANY, INC.**

By:   
P. Craig Cardon  
Elizabeth Moreno McArthur  
SQUIRE SANDERS & DEMPSEY L.L.P.  
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Attorneys for Registrant

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Sadie Lum

(Type or Print Name of Person Mailing Paper or Fee)

*Sadie Lum*

(Signature of Person Mailing Paper or Fee)

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One Maritime Plaza  
Suite 300  
San Francisco, CA 94111  
(415) 954-0200

Attorneys for Registrant



Reg. No. 2,382,866 File No. 40362.10 By E. McArthur

Mark: TBC HERRINGTON'S TEDDY BEAR CLUB & Design

Date Mailed January 3, 2002 Due Date

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Direct Dial: +1.415.954.0298  
ccardon@ssd.com

December 30, 2002

**BY U.S. EXPRESS MAIL**

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513  
Attention: Legal Assistant, TTAB

Re: **Cancellation No.: 32,146**  
**Mark: TBC HERRINGTON'S TEDDY BEAR CLUB & Design**  
**Registration No.: 2,372,585**  
**Registration Date: August 1, 2000**  
**Registrant: Herrington & Company, Inc.**  
**Our Ref.: 40362.6**

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Please direct all correspondence regarding this matter to my attention.

Very truly yours,

A handwritten signature in cursive script, reading "P. Craig Cardon".

P. Craig Cardon  
Attorney at Law

PCC/sl

Enclosure

**SQUIRE  
SANDERS****LEGAL  
COUNSEL  
WORLDWIDE****SQUIRE, SANDERS & DEMPSEY L.L.P.**One Maritime Plaza, Suite 300  
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If Problems: +1.415.954.0303

January 3, 2003

**PLEASE DELIVER THESE PAGES IMMEDIATELY**

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**To:** David M. Mermelstein**Facsimile No:** 703.746.7083**Company:****Confirmation No:****From:** Elizabeth Moreno McArthur**Direct Dial No:** +1.415.954.0287**E-mail:** emcarthur@ssd.com**Re:** TBC HERRINGTON'S TEDDY BEAR CLUB & Design  
Our Ref.: 40362.06 and .10**Message:** Pursuant to our discussion, please see attached.**CONFIDENTIALITY NOTICE:**

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